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## ATTORNEYS FOR PLAINTIFF

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**SCOTT THOMPSON,  
individually and as parent and  
guardian of his Minor Child A.T.,  
and DANIELLE THOMPSON,  
individually and on behalf of all  
others similarly situated.**

## **Plaintiffs,**

V.

# THE WALT DISNEY COMPANY

## **Defendants.**

Case No.:

**CLASS ACTION COMPLAINT  
FOR DAMAGES AND  
DECLARATORY AND  
INJUNCTIVE RELIEF FOR:**

**(1) VIOLATION OF  
CALIFORNIA UNFAIR  
COMPETITION LAW,  
CAL. BUS. & PROF. CODE  
§§ 17200;**

**(2) VIOLATION OF  
CALIFORNIA LEGAL  
REMEDIES ACT (CLRA),  
CAL. CIV. CODE § 1750, ET  
SEQ.; AND**

## **FOR DAMAGES FOR:**

### (3) NEGLIGENCE

## **JURY TRIAL DEMANDED**

COMES NOW, **SCOTT THOMPSON**, individually and as parent and guardian of his Minor Child A.T., and **DANIELLE THOMPSON**, individually and on behalf of all others similarly situated (“Plaintiffs”), individually and on behalf of all others similarly situated, seeks a permanent injunction and, (specifically excluding damages under the California Legal Remedies Act (CLRA), Cal. Civ. CODE § 1750,

et seq.) damages against The Walt Disney Company (“Defendant” or “Disney”).

In support thereof, Plaintiffs allege, upon personal knowledge as to Plaintiffs’ individual actions and upon information and belief and/or counsel’s investigations as to all other matters, the following:

#### **JURISDICTION AND VENUE**

1. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d)(2)(A) because this case is a class action where the aggregate claims of all members of the proposed class are in excess of \$5,000,000.00, exclusive of interest and costs, there are 100 or more members of the proposed class, and at least one member of the proposed class, including Plaintiff, is a citizen of a state different than Defendant.

2. This Court has personal jurisdiction over Defendants because Defendants conduct business in California, including within this District. Defendant is headquartered in California and, therefore, has sufficient minimum contacts with this state, and/or sufficiently avail themselves to the markets of this state through their sales and marketing within this state to render the exercise of jurisdiction by this Court permissible.

3. Under 28 U.S.C. 1391, venue lies in this District because Defendant is headquartered in this District and makes decisions related to all of its parks, hotels, and/or resorts from its headquarters and are thus subject to the court’s personal jurisdiction as indicated above.

#### **INTRODUCTION**

4. Plaintiffs bring this action against Defendants for violation of California’s Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code §§ 17200 and California’s Consumer Legal Remedies Act (“CLRA”) Cal. Civ. Code § 1750, and Negligence.

5. Since at least 2013, Disney has known or should have known that it’s pool area surface is slippery and that it should apply anti-slip products and/or

1 technology on the ground to prevent slipping of visitors to Disney Aulani and that it  
2 should provide adequate warnings prior to and at the time of their arrival that its  
3 grounds are particularly slippery and that it has failed to apply anti-slip products  
4 and/or technology on the ground to decrease the likelihood of slips and falls.

5       6. Because Disney does not have, and has never had, an adequate corporate  
6 policy that is reasonably calculated to prevent slipping on its pool grounds, Plaintiffs  
7 seek a permanent injunction against Disney requiring that Disney:

8             (a) Disseminate a notice reasonably intended to reach all vacationers and  
9 insert remedial disclosures in future advertising and marketing in a form approved by  
10 the above counsel, and correcting any misstatements, misrepresentations, and  
11 omissions of fact described above;

12             (b) Immediately cease marketing and selling vacations, accommodations,  
13 and access to the pool area unless you first notify visitors of the defects in the pool  
14 area flooring;

15             (c) Cease Defendant's advertising, marketing, and/or sales of their of their  
16 vacations and accommodations at Aulani, a Disney Resort and Spa (hereinafter,  
17 "Aulani"), as described more fully below, in violation of the Consumers Legal  
18 Remedies Act ("CLRA"), CAL. CIV. CODE § 1750 et seq.;

19             (d) Meaningfully disclose all material facts regarding its outdoor pool area  
20 and the propensity to slip and failure to disclose that Disney fails to apply anti-slip  
21 technology and/or products; and otherwise immediately cease to engage in the  
22 violations of the Consumers Legal Remedies Act and Unfair Competition Law (for  
23 example, put in the marketing that the pool grounds are more slippery than other pool  
24 grounds, place anti-slip floor products and technologies in areas that are prone to  
25 slipping – namely any areas where people walk and are expected to be wet, encourage  
26 people to wear anti-slip shoes when walking around wet areas, and train Disney  
27 employees to remind people to walk around wet areas, place anti-skid strips in areas  
28 prone to slipperiness.);

(e) Apply anti-slipping products and/or technology on the pool area;

(f) Expressly excluding any and all damages under the CLRA, providing to each Class Member compensatory, statutory, nominal, and/or punitive damages owed to them as a result of medical bills incurred as a result of Defendants' violations of law.

(g) Require Defendant to:

(i) warn the general public of the propensity of Disney's pool grounds to be slippery and that Disney fails to apply anti-slip products and/or technology to the grounds to provide a safe place for people to walk near the pool area.

(ii) Implement adequate corporate policies to prevent the general public and visitors and consumers to Aulani from slipping and falling.

(h) Any other relief that justice so requires.

## PARTIES

## A. Plaintiffs

7. Plaintiff Scott Thompson, natural father and guardian of A.T. (a minor), is a citizen of the state of Missouri.

8. Minor A.T. is a citizen of the state of Missouri.

9. Danielle Thompson is a citizen of the State of Missouri.

10. As a result of Disney's misrepresentations and/or omissions, Danielle Thompson booked a stay at Aulani, A Disney Resort and Spa, for her family. On the date of arrival, Minor A.T. slipped on the floor of the pool deck near the slides.

## B. Defendant

11. Defendant The Walt Disney Company is a Delaware corporation with its principal place of business located at 500 S Buena Vista Street in Burbank, California 90521. Defendant is, therefore, a citizen of the states of Delaware and California. Defendant is engaged in the sale and marketing of family vacations, family hotel and

resort stays, and family friendly entertainment, including stays at Aulani, A Disney Resort and Spa.

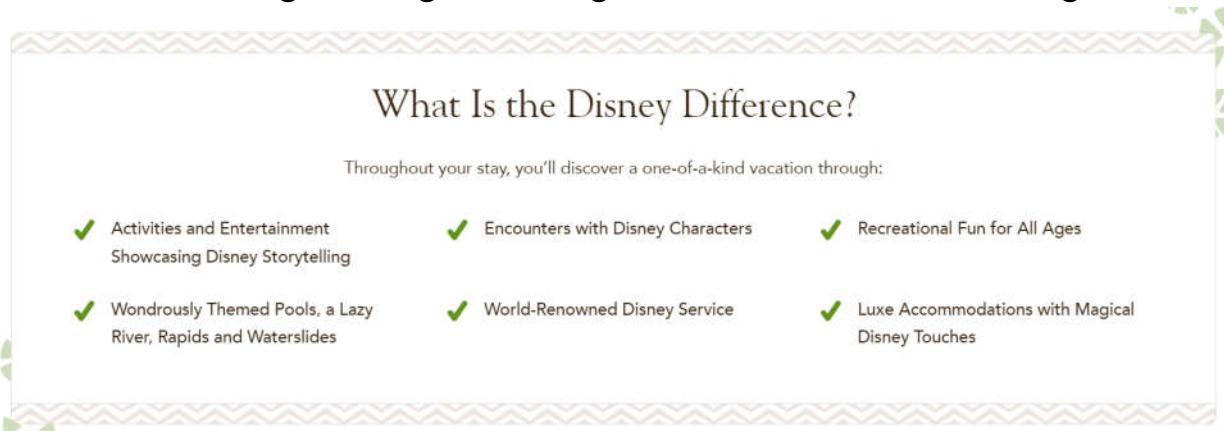
12. At all times herein mentioned, the acts and omissions of Defendants proximately caused Plaintiffs' damages.

## **FACTUAL ALLEGATIONS**

## **MATERIAL MISREPRESENTATIONS AND OMISSIONS OF FACT**

13. Defendant has advertisements and marketing that create a false impression that their facilities are safe and are for families of all ages and that they were designed with families in mind.

14. For example, Disney describes the “Disney Difference” as a one-of-a-kind vacation through, among other things, “Recreational Fun for All Ages”:



See, e.g., <https://www.disneyaulani.com/about-aulani/the-disney-difference/>

15. Similarly, Disney claims that “Aulani Resort offers family fun and surprises at every turn[,]” including the opportunity to “play in pools with special Disney touches”:

Family Time

Aulani Resort offers family fun and surprises at every turn. Snorkel in private Rainbow Reef lagoon, splash in the misty grotto, play in pools with special Disney touches, and dine at restaurants with menu choices for adults and children. Your vacation is better together at Aulani Resort!



**Check the Daily 'Iwa**



See, <https://www.disneyaulani.com/about-aulani/the-disney-difference/>

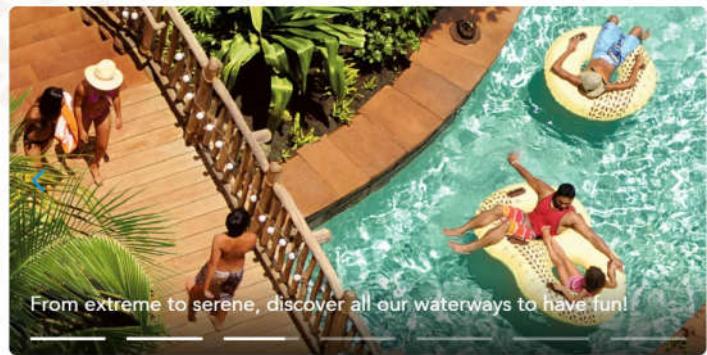
16. Disney promotes that “At Aulani Resort, there’s something for everyone in the family[]” every referencing “Adventurous families can discovery new water sports or just relax at the spa and salon. Everyone’s happy.!”

## Your Personal Paradise

At Aulani Resort, there's something for everyone in the family. Make your own Mickey Ears together or learn to play Ukulele at the Pau Hana Room. Adventurous families can discover new water sports or just relax at the spa and salon. Everyone's happy!



For some add-on fun sign-up for 'Imi Loa Nā Hōkū — Stargazing or Kāpala Ki'i — t-shirt stamping, and other fun activities at the Pau Hana Room.



See, <https://www.disneyaulani.com/about-aulani/the-disney-difference/>

17. Nowhere in the online marketing and advertising materials regarding the Waikolohe Pool and surrounding areas does Disney disclose that the ground is more slippery than a normal pool area grounds or that guests should use extreme caution when ambulating around Aulani Waikolohe Pool area.

18. Disney, does indicate that the Pool was “Designed with families in mind” and that the area is “enticing for every member of your ‘ohana’”:

1 FEATURES OF WAIKOLOHE POOL

2 *Waikolohe* is Hawaiian for “mischievous water”—and with its whimsical features, Waikolohe Pool lives up to its name.

3 This 8,200-square-foot, zero-entry pool offers something enticing for every member of your ‘ohana. Here, you can:

4

- 5 • Splash into fun with friends and family
- 6 • Lounge poolside—or float in the pool and let your cares drift away
- 7 • Plunge down Volcanic Vertical, the thrilling tunnel body slide
- 8 • Party poolside with some favorite Disney Characters at a signature celebration
- Enjoy one of our teens-only, tweens-only or all-ages themed parties

9 *See,* <https://www.disneyaulani.com/activities/waikolohe-pool/>

10 [...]

11 19. The “Know Before You Go” disclosures are absent of any warning that  
12 the pool area is excessively slippery or that it lacks anti-slip products and/or  
13 technologies:

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1 KNOW BEFORE YOU GO

2 View important information about wristbands, towels, pool policies and accessibility.

3 **Wristbands and Towels**

4

- 5 • You must wear a wristband to use the pools, pool chairs and beach chairs at Aulani Resort. A new wristband is required each day.
- 6 • Wristbands are given only to those staying at Aulani Resort. Your daily allocation of wristbands is based on the number of Guests in your travel party and cannot exceed the maximum occupancy for your specific room type.
- 7 • To receive your daily wristband, please present your room key at any towel station in the Waikolohe Valley pool area.
- 8 • For pool towels, visit a towel station and show your valid wristband. Please do not bring room towels to the pool.

9 **Policies**

10

- 11 • To provide equal access for all Guests, seating is limited to one lounge chair per guest and reserving chairs is not permitted. Prior to 8 a.m., guests must be actively using their chairs.
- 12 • Children ages 11 and under must be accompanied by an adult.
- 13 • We highly recommend that small children wear life jackets while in the water. Complimentary life jackets are available (while supplies last) at our towel stations but must be returned each day before the towel station closes.
- 14 • You are welcome to come and go from your chair as you enjoy the Waikolohe Valley pool area. However, if belongings are left unattended for more than one hour, they will be removed and stored at the closest towel station. At the end of the day, unclaimed items will be sent to Lost & Found.
- 15 • Upon arrival at the Resort, please check for the most up-to-date list of policies.
- 16 • Swim diapers, life vests, water wings, infant inner tubes with seats, fun noodles and goggles are permitted in the pools, but please note the following:
- 17 • Ball throwing is prohibited on all pool decks and in all pools throughout Aulani Resort & Spa.

18 **Prohibited Items**

19 On the pool deck:

- 20 • Coolers (unless for medical purposes)
- 21 • Wheeled items such as wagons, carts, skateboards and scooters.
- 22 • Alcoholic beverages (unless purchased at the Resort)

23 In the pool:

- 24 • Food and drinks
- 25 • Snorkels, fins, inner tubes without a bottom, kickboards, large flotation devices without net seats, mesh rings (except for infants), dive toys and water guns

26 **Accessibility**

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- 28 • For Guests using wheelchairs, Waikolohe Pool has zero-depth entry points, allowing Guests to roll right into the water. A water wheelchair is available for Guests to transfer into and use.
- 29 • This pool area is equipped with a pool lift to assist Guests in transferring in and out of the water.
- 30 • Guests must be able to be transported from the chair into the lift unassisted, or with the assistance of a member of their travel party.

31 *See, <https://www.disneyaulani.com/activities/waikolohe-pool/>*

32     **20. The Pool areas are even referred to as “interactive” in nature:**  
33     **Pools at Aulani Resort**

34     Splash out at the sprawling Waikolohe Valley  
35     pool area, the destination for aquatic family  
36     fun.

37     Hurtle down water slides, float along a lazy river,  
38     snorkel in a private lagoon or simply admire the view  
39     from a romantic infinity-edge pool. With interactive  
40     play areas, a quiet pool and more, this imaginative  
41     oasis offers sun-soaked fun and relaxation for all ages.



42     **21. Furthermore, nowhere in Disney’s marketing or advertising materials**

1 online regarding Waikolohe Stream does Disney disclose that the grounds  
2 surrounding the adventure slides are excessively slippery:

3 From extreme to serene, discover all our waterways to have fun!

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5  [View Location Map](#)

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6 FEATURES OF WAIKOLOHE STREAM

7 With a lazy river and 2 rushing rapid experiences, Waikolohe Stream is brimming with family fun.

8 Waikolohe means "mischievous water" in the Hawaiian language—and this imaginative experience truly lives up to its name.

9 **Lazy River**

10 Grab a tube and let the gentle current carry you through the Waikolohe Valley. Designed with rock formations and natural details inspired by O'ahu, the course features caverns and fountain springs that offer bursts of cooling refreshment.

11 **Rapid Adventures**

12 From atop Pu'u Kilo—a craggy peak overlooking Waikolohe Valley—take off on 2 awesome adventures:

- 13 • **Volcanic Vertical:** An enclosed, extreme body slide that plunges you into Waikolohe Pool
- 14 • **Tubestone Curl:** An open-air, twisting and turning tube adventure that eventually launches you into Waikolohe Stream—ride it solo or with a partner!

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1 KNOW BEFORE YOU GO

2 View important information about wristbands, towels, pool policies and accessibility.

3 **Wristbands and Towels**

4

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- You must wear a wristband to use the pools, pool chairs and beach chairs at Aulani Resort. A new wristband is required each day.
- Wristbands are only given to those staying at Aulani Resort. Your daily allocation of wristbands is based on the number of Guests in your travel party, and cannot exceed the maximum occupancy for your specific room type.
- To receive your daily wristband, please present your room key at any towel station in the Waikolohe Valley pool area.
- For pool towels, visit a towel station and show your valid wristband. Please do not bring room towels to the pool.

8 **Policies**

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- To provide equal access for all Guests, seating is limited to one lounge chair per guest and reserving chairs is not permitted. Prior to 8 a.m., guests must be actively using their chairs.
- Children ages 11 and under must be accompanied by an adult.
- We highly recommend that small children wear life jackets while in the water. Complimentary life jackets are available (while supplies last) at our towel stations but must be returned each day before the towel station closes.
- You are welcome to come and go from your chair as you enjoy the Waikolohe Valley pool area. However, if belongings are left unattended for more than one hour, they will be removed and stored at the closest towel station. At the end of the day, unclaimed items will be sent to Lost & Found.
- Upon arrival at the Resort, please check for the most up-to-date list of policies.
- Swim diapers, life vests, water wings, infant inner tubes with seats, fun noodles and goggles are permitted in the pools, but please note the following:
- Ball throwing is prohibited on all pool decks and in all pools throughout Aulani Resort & Spa.

15 **Prohibited Items**

16 On the pool deck:

17

- Coolers (unless for medical purposes)
- Wheeled items such as wagons, carts, skateboards and scooters.
- Alcoholic beverages (unless purchased at the Resort)

18 In the pool:

19

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- Food and drinks
- Snorkels, fins, inner tubes without a bottom, kickboards, large flotation devices without net seats, mesh rings (except for infants), dive toys and water guns

21 **Accessibility**

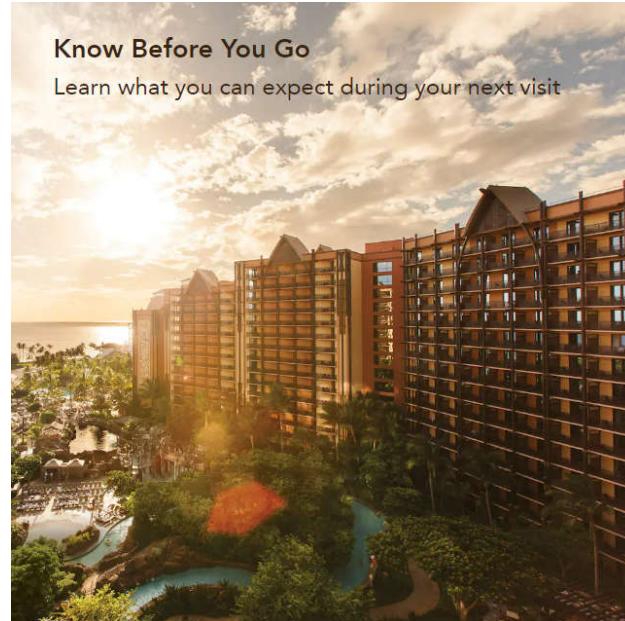
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- For Guests using wheelchairs, Waikolohe Stream has zero-depth entry points, allowing Guests to roll right into the water. A water wheelchair is available for Guests to transfer into and use.
- This pool area is equipped with a pool lift to assist Guests in transferring in and out of the water.
- Guests must be able to be transported from the chair into the lift unassisted, or with the assistance of a member of their travel party.

24       *See, <https://www.disneyaulani.com/activities/waikolohe-stream/>*

25       22. Even the section of the website generally highlighting important things to know and things to expect during your next visit is silent as to the fact that the outdoor resort pool floors are excessively slippery Disney Aulani:



See, [Know Before You Go Reference.](#)

23. *See also,* <https://www.disneyaulani.com/about-aulani/important-updates/>

#### WELCOME BACK TO AULANI RESORT

Get ready for your visit! Here are a few things to know before you go.  
Be sure to check back here as information may be updated.

Please make sure that you have reviewed any advisories or restrictions  
that may be in place for travel to Hawaii for **international travelers**.

Please note that the State of Hawaii recommends the following:

- Everyone is encouraged to get vaccinated and boosted with the COVID-19 vaccine when eligible.
- Masks are strongly recommended for all Guests (ages 2 and older) in crowded settings.

Please note, face coverings are not permitted while experiencing water slides or in the water.

24. Additionally, the photographs online even include children running in some areas of the Pool Grounds of the Resort:



## Enjoy Comforts of Home in Your Villa – And a Resort in Your Backyard!

Make your family vacation even more delightful in a comfy Disney Vacation Club Villa with just-like-home amenities, including a full kitchen, private bedrooms, spacious interiors and a washer/dryer—plus all the amazing Aulani Resort activities just outside your door!

[Discover Disney Vacation Club Villas](https://www.disneyaulani.com/villas)

See: <https://www.disneyaulani.com/>

25. Disney even encourages its guests to “Splash out at the sprawling Waikolohe Valley pool areas” and that the oasis offers sun-soaked fun [...] for all ages:

16 Pools at Aulani Resort



22 Splash out at the sprawling Waikolohe Valley pool area, the destination for aquatic family fun.

23 Hurtle down water slides, float along a lazy river, snorkel in a private lagoon or simply admire the view from a romantic infinity-edge pool. With interactive play areas, a quiet pool and more, this imaginative oasis offers sun-soaked fun and relaxation for all ages.

25 See: <https://www.disneyaulani.com/activities/pools/pools>

## THE REALITY

26. In reality, Disney’s pool grounds are dangerously slippery when wet.

27. Aulani guests who posted on Trip Advisor<sup>1</sup> said the following in regards to the conditions of the pool grounds (emphasis added):

Darren V wrote a review Aug 2019

1 contribution 6 helpful votes

Just ok, not worth price

Stayed 4 nights, 5 days. Within an hour of being on property I realized that was way to much time here. Ideally 2 nights, maybe even 1 is all you need. I was nervous coming here based on the reviews but wanted to take the kids and see it for myself. All the negative reviews I read are correct. For one thing, it's def way to crowded, especially for the price. The four seasons next door seemed so much more relaxing and more my speed.

The grounds here are super slippery, I mean law suit slippery. Wife slipped on first day just walking. Daughter slipped next day while holding my wife's hand. She got cut up pretty bad on face from fall. They were walking so slow too, scary. At this point, we wanted to just leave resort, it seemed dangerous and hazardous. There excuse is "we have resurfacing planned later in the month". Well that does us no good right now at peak season and premium pricing. They should be closed down until resurfacing is complete . This is a major problem that they are waiting til peak season is over to address, sad. Super disappointed in managements handling of our situation. [...].

Read less

Date of stay: August 2019

Trip type: Traveled with family

[...]

BoyMomTravels1980 wrote a review Jun 2019

3 contributions 10 helpful votes

**Terrible!! Dangerous!! Fear for kids safety here!!**

**Our family is here currently - kids age 3 and 6. Pool dangerous- kids have fallen dozens of times as super slippery!!** Room a/c doesn't work because "it is motion activated". Water takes >5 minutes to heat up and 5 mins to cool down (concern for scalding children in shower). Kids club is full before it even opens. Beach so busy that you cannot even enjoy water and people will run over you with boogie boards, etc - again, extremely

<sup>1</sup> [https://www.tripadvisor.com/Hotel\\_Review-g60654-d2140201-Reviews-Aulani\\_A\\_Disney\\_Resort\\_Spa-Kapolei\\_Oahu\\_Hawaii.html#REVIEWS](https://www.tripadvisor.com/Hotel_Review-g60654-d2140201-Reviews-Aulani_A_Disney_Resort_Spa-Kapolei_Oahu_Hawaii.html#REVIEWS)

1 dangerous!! Chair situation is supposed to be monitored but isn't-  
2 watched two families fight over chairs as there are none available!! Cost  
3 is also issue - almost \$50 for two muffins and a cup of strawberries  
4 (although this really is the least of our concern at this time)! **I wish we  
had options for getting away from this place before something bad  
happens- it is DANGEROUS and I am very concerned being here!!**

5 The only positive is that kids club is very nice if you can get a spot!

6 Read less

7 Date of stay: June 2019

8 Trip type: Traveled with family

[...]

9 Jennifer M wrote a review May 2019

10 2 contributions6 helpful votes

11 WORST nightmare

12 Unless you enjoy throwing money away or waiting in lines all day to see  
13 characters this place is not for you! [...] **The kids water park is poorly  
14 designed and is a scull fracture waiting to happen.** Huge lines for the  
15 slides. No chairs at pool or beach unless you get there at 6am. All events  
16 sell out. This place is jammed with adults with no kids who have no  
17 business occupying spots in line in my oppinion. Stay far away!!!!

18 Read less

19 Date of stay: May 2019

20 Trip type: Traveled with family

[...]

21 Reg V wrote a review Jun 2018

22 Ipswich, Australia12 contributions9 helpful votes

23 Too Expensive!!

24 We stayed 5 days June 19-24 2018

25 2 adults 2 kids

[...]

26 **Watch the pool side surfaces - slippery with lots of falls.**

[...]

27 Date of stay: June 2018

28 Trip type: Traveled with family

[...]

29 blondy1623 wrote a review Jun 2018

30 Redmond, Washington87 contributions138 helpful votes

31 Zero star rating.

32 Absolutely awful. Felt like we had been conned by Disney.

1 [...]

2 **Pool and lazy river is freezing and is very slippery. My 4 year old fell**  
3 **multiple times and I fell once.**

4 **We wouldn't recommend this vacation to anyone.**

5 Read less

6 Date of stay: June 2018

7 Trip type: Traveled with family

8 [...]

9 jocelynau wrote a review Dec 2017

10 Brisbane, Australia62 contributions55 helpful votes

11 [...]

12 While the pools are good they are also gross. They are heavily  
13 chlorinated, have lines lines lines and so many children you try not to  
14 think about the water. The lazy river was closed for much of our stay and  
15 **the grotto had a slippery bottom** because it needed cleaning.

16 Really I want my \$13k back, this place is overpriced, over hyped and  
17 money grubbing. If your not in the cult of DVC you will regret it and  
18 soon realise DVC is why people come here and only rate it well because  
19 they are a captive disney audience.

20 Read less

21 Date of stay: December 2017

22 Trip type: Traveled with family

23 [...]

24 poiseandivy wrote a review Oct 2017

25 McKinney, Texas3 contributions17 helpful votes

26 **BEWARE OF INJURY! GROUNDS EXTREMELY SLIPPERY!!**  
**DISNEY WILL SAY IT'S YOUR FAULT**

27 My family and I are huge Disney fans. We have been on 3 cruises and  
28 countless vacations to Disneyland and World. This was our first trip to  
Aulani. We stayed Aug 1-5. **While there I slipped and injured my**  
**back on the stairs getting into the Ka Maka pool ( the one with the**  
**infinity edge and Jacuzzi). Another lady slipped on the stairs as I was**  
**getting out. Disney did nothing to prevent others from getting hurt.**

**No sign. No padding, or something on the stairs. I had a horrible rest**  
**of my 7 day vacation because of the pain.** I haven't been able to work.

Disney is now stating that they have no cameras and no proof that I didn't  
just slip on my own! "Magically", they can't locate the life guard that  
helped me. I am shocked that a company like Disney would be so  
unethical! If you were there during that time and saw anyone fall getting

1 into this pool, please PM me. **If you are planning a trip, BE  
2 CAREFUL!!! Disney will ignore your injuries, blame you, and while  
3 your entire life is stopped because you can't work: send passive  
4 aggressive emails with**

**" Ma halo".Shame on Disney for treating guests this way.**

5 Read less

6 Date of stay: August 2017

7 Trip type: Traveled with family

[...]

8 ss20172017 wrote a review Apr 2017

9 Novi2 contributions11 helpful votes

10 So many staff there... for what..?

11 Worst Resort staff experience.. Many bellboys will just look at you  
12 carrying heavy luggage/golf bags as they are busy talking about their  
13 paychecks! So many lifeguards are on duty. **Nobody came to check on  
14 my husband when he fell on the slippery pool steps.**

15 Read less

16 Date of stay: April 2017

17 Trip type: Traveled on business

[...]

18 truegrit2016 wrote a review Jan 2016

19 Sydney, Australia20 contributions41 helpful votes

20 **Don't do it.**

21 After 12 days in Hawaii staying at the Pink Palace The Royal Hawaiian  
22 (seen better days 2 decades ago) the St Regis Kauai (great) the Four  
23 Seasons Maui (a must, tell all your friends) I decided to spend the last  
24 four days here with my family, my two toddlers were the driving force on  
25 this decision.

26 How was I to know they would drive us over a cliff. I'd booked 3 rooms,  
27 and had pre requested to cots. I'm a VIP client with the wholesaler and  
28 expected to have quality experience here.

[...]

29 **The pool,** wiz bang just don't put your head under, **don't walk around it  
30 unless you have minders to catch you, so slippery,** fight for a deck  
31 chair and don't get up when you find one as there are not enough and  
32 there are claim jumpers here.

[...]

33 Date of stay: January 2016

[...]

1 See, [https://www.tripadvisor.com/Hotel\\_Review-g60654-d2140201-Reviews-or10-Aulani\\_A\\_Disney\\_Resort\\_Spa-Kapolei\\_Oahu\\_Hawaii.html#REVIEWS](https://www.tripadvisor.com/Hotel_Review-g60654-d2140201-Reviews-or10-Aulani_A_Disney_Resort_Spa-Kapolei_Oahu_Hawaii.html#REVIEWS)

2 28. Additional reviews on Trip Advisor<sup>2</sup> provided the following (emphasis  
3 added):

4 Parisa F

5 wrote a review Jun 2013

6 Irvine, California, United States

7 3 contributions15 helpful votes

8 I CAN'T BELIEVE THEY DID THAT!!!

9 My mother in law fell two times in a five minute period near the pool  
10 area the first full day we were at the resort. She sprained her knee  
11 which left her in a wheel chair for the entire trip and she broke her  
12 wrist in two places and may now need to get pins put into her arm.  
13 The material used on the ground is a very slippery stone in an area  
14 that is intended for swimmers, hence they know it is going to be  
15 consistently wet - why would they do that? Clearly our trip was  
16 ruined as we had to cancel nearly all our excursions, she could no  
17 longer go in the water, she was stuck in her room and had to spend  
18 too much time in the hospital. During one of her trips to the hospital,  
19 she was told by the medical staff that this has happened before and  
20 often (why have they not fixed the problem???). My own son nearly  
21 fell in the same area three times but luckily I was holding his hand.  
22 Numerous managers at the resort were notified numerous times over  
23 a seven day period and. . . ready for this. . . THEY DID NOTHING  
24 (except send a plate with 4 chocolate covered strawberries to her  
25 room)!! Need I say more? Unfortunately for them - I am a lawyer:)

26 Read less

27 Date of stay: June 2013

28 See, [https://www.tripadvisor.com/Hotel\\_Review-g60654-d2140201-Reviews-or10-Aulani\\_A\\_Disney\\_Resort\\_Spa-Kapolei\\_Oahu\\_Hawaii.html#REVIEWS](https://www.tripadvisor.com/Hotel_Review-g60654-d2140201-Reviews-or10-Aulani_A_Disney_Resort_Spa-Kapolei_Oahu_Hawaii.html#REVIEWS).

29. Additional reviews on Trip Advisor provided the following (with  
emphases added):

30 Janice C wrote a review Jul 2016

27 <sup>2</sup> [https://www.tripadvisor.com/Hotel\\_Review-g60654-d2140201-Reviews-or10-Aulani\\_A\\_Disney\\_Resort\\_Spa-Kapolei\\_Oahu\\_Hawaii.html#REVIEWS](https://www.tripadvisor.com/Hotel_Review-g60654-d2140201-Reviews-or10-Aulani_A_Disney_Resort_Spa-Kapolei_Oahu_Hawaii.html#REVIEWS)

1 bratbee45 contributions63 helpful votes  
2

**They need a lot of work with customer service as well as providing a  
safe environment**

We've never stayed at the Aulani and heard so many great things about it so we finally went (couple days ago) for our daughter's birthday and so regret it. My poor girl slipped and fell into the pool and there's no lifeguard coming to check on us, absolutely nobody despite my loud scream. They do have lifeguards everywhere (teenagers) but I really don't know if they're there for a show or take their job seriously enough. On our 2nd night, our 6mo vomit all over the bed and we asked for room service, guess what? They left the sheets on our bed instead of making the bed for us - is this a hostal or a hotel? Even a motel would change sheets for their customers. On our last night, we had buffet dinner at the hotel and our entire family suffered from food poisoning. (probably from the oysters) And all of these added up to my \$4000 hotel expense, thanks Aulani for this memorable trip.

[Read less](#)

12 **Date of stay:** July 2016

13 **Pat F** wrote a review Jan 2018

14 Sammamish, Washington62 contributions57 helpful votes

15 **poor safety features around property**

16 just came back. spent a lot of time around the pool where i saw people  
17 slipping and sliding on the deck. then of course i fell, but did a faceplant,  
18 which caused a lot of bleeding on my cheek. luckily a lifeguard was there  
19 (Marcos) and patched me up as best he could. no 'slip' signs on walkway.  
20 no rubber mats. went to front desk to complain and got zero response  
21 (Kristen). insisted on filing a safety claim (was dissuaded several times  
22 from doing so). Disney needs to do something about the deck, and about  
23 taking claims more seriously if they want repeat guests.

[Read less](#)

22 **Date of stay:** January 2018**Trip type:** Traveled with family

23 [...]

24 **poiseandivy** wrote a review Oct 2017

25 McKinney, Texas3 contributions17 helpful votes

26 **BEWARE OF INJURY! GROUNDS EXTREMELY SLIPPERY!!  
DISNEY WILL SAY IT'S YOUR FAULT**

27 My family and I are huge Disney fans. We have been on 3 cruises and  
28 countless vacations to Disneyland and World. This was our first trip to  
Aulani. We stayed Aug 1-5. While there I slipped and injured my back

1 on the stairs getting into the Ka Maka pool ( the one with the infinity  
2 edge and Jacuzzi). Another lady slipped on the stairs as I was getting out.  
3 Disney did nothing to prevent others from getting hurt. No sign. No  
4 padding, or something on the stairs. I had a horrible rest of my 7 day  
5 vacation because of the pain. I haven't been able to work. Disney is now  
6 stating that they have no cameras and no proof that I didn't just slip on  
7 my own! "Magically", they can't locate the life guard that helped me. I  
8 am shocked that a company like Disney would be so unethical! If you  
9 were there during that time and saw anyone fall getting into this pool,  
10 please PM me. If you are planning a trip, BE CAREFUL!!! Disney will  
11 ignore your injuries, blame you, and while your entire life is stopped  
12 because you can't work: send passive aggressive emails with  
13 "Ma halo".Shame on Disney for treating guests this way.

14 Read less

15 **Date of stay:** August 2017 **Trip type:** Traveled with family

16 [...]

17 **sfsaigon** wrote a review Jul 2016

18 San Mateo, California **52** contributions **38** helpful votes

19 **Too expensive, not worth it,**

20 Paid >\$400/night, small room, very small kitchenette. My room had  
21 ocean and resort view but pool view is not great due to faked mountain  
22 and trees cover pool and lazy river. The resort is trying to sell package to  
23 Japanese tourists....cost more money to swim (snorkel) with fish while  
24 Sheraton in mauii is free. Not too many activities on beach except a  
25 floating deck in ocean but kids can slip easily ( very dangerous). Long  
26 line for water slide. With the same amount of money spend, I rather go to  
27 all inclusive resort in Mexico or Caribbean and less waiting for water  
28 park. The only nice thing I like is the shower room for guess after we  
check out ( I traveled in apr 2015)

29 Read less

30 **Date of stay:** August 2015

31 [...]

32 30. Also, Minor A.T. is not the only person to have slipped and/or fallen on  
33 the wet floors of Aulani's pool area within the year.

34 31. A Disney Vacation Club owner fell in or about the month of September  
35 2022, so Defendant was on clear notice of the condition of the pool area and its  
36 excessive slipperiness.

32. Additionally, Lauren Pangle, P.A., an emergency room medical provider of The Queen's Medical Center-West O'ahu located at 91-2141 Fort Weaver Road Ewa Beach, Hawaii 96706 stated to Danielle Thompson and Scott Thompson that they see numerous kids from slipping and falling at Disney Aulani.

## ANTI-SLIP TECHNOLOGIES

33. Constant exposure to the sun and water can deteriorate your pool's concrete deck and cause it to lose its grip. In addition to the examples listed above, Aulani can also utilize and apply anti-slip treatments on the pool area flooring on a regular basis. The technology can be applied quickly (within 2 hours) and can be immediately walked on – *i.e.*, there is no downtime.

34. For example, [www.dontslip.com](http://www.dontslip.com) sells an anti-slip treatment even for floors that are wet:

## STEP 1

**STEP 4** Our expert team applies the treatment and most jobs require less than 2 hours.

## STEP 2

**STEP 2**  
**Our patented “no cure” solution requires no drying time so its ready to go almost immediately**

### STEP 3

**STEP 3** **Enjoy traction even when floors are wet!** Reduce potential injury and liability. Satisfaction Guaranteed!

# WORKS ON NEARLY ANY SURFACE

**Without changing appearance**

**PRICES STARTING AS LOW AS \$2.00 PER FT  
(\$150 minimum per job)**

## POOL DECK COATINGS

- x Non Slip
- x Barefoot Friendly
- x Easy to clean
- x Non Fading

## **PERFECT FOR POOL DECKS, WOOD DECKS, PATIOS AND RAMPS**

Commercial & Residential: Ceramic Tile, Natural Stone, Vinyl, VCT, and Laminate & More. Kitchens, Tubs, Showers, Floors, Decks, Pools, Spas, Boats, Lobbies, Stairs, and Walkways. Safer floors, wet or dry!

1 https://dontslip.com/ (emphasis added)

2 35. The FAQs available on the website provide, importantly:

4 **Why do you say that the treatment makes it "Safer Wet than**  
5 **Dry"?**

6 Our treatment changes the surface in such a way that when exposed to  
7 water the floor is actually measurably less slippery when it is wet than  
when it is dry.

8 36. Aulani could easily have this treatment – or something similar – applied  
9 to the pool deck areas. However, Aulani does not apply it or something similar or it  
10 does not apply it frequently enough.

11 37. Additionally, Aulani does not apply anti-slip grip tape or anti-slip rugs in  
12 areas that should have anti-slip grip tape or anti-slip rugs.

13 **PLAINTIFF SPECIFIC FACTS**

14 38. Plaintiffs arrived on Aulani's property on or about March 19, 2023 for a  
15 two day, one night stay.

16 39. One of the reasons that Plaintiffs stayed at the Disney Aulani Resort and  
17 Spa was to enjoy the slides that it advertised. Plaintiffs checked in and while waiting  
18 for their rooms to be ready, Plaintiffs attempted to enjoy the poolside amenities and  
19 slides.

20 40. The Thompson children went down the slides and upon exiting the slide  
21 and stepping out of the pool, Minor A.T. (then, age 10) slipped and fell on the slippery  
22 surface of the ground, hitting the back of his head and splitting his head open on the  
23 corner of the top step of the steps leading outside of the slides area.

24 41. As a result of the injury, Danielle Thompson and Scott Thompson had to  
25 take Minor A.T. to the Emergency Room for examination. The entire ordeal took  
26 several hours, hours they should have been relaxing in and around the pool and  
27 enjoying the amenities offered at Aulani.

28 42. Minor A.T.'s injury required several stiches to close up the wound. As a

1 result of having a wound requiring stitches, Minor A.T. was unable to get his head wet  
2 in the ocean or pool to prevent the wound from being infected for the seven (7+)  
3 remaining days of the trip. Furthermore, the Thompson family was unable to enjoy the  
4 rest of their stay at Aulani itself (check out was on March 20<sup>th</sup>). Minor A.T. even  
5 stayed inside until March 21 because of how he felt and which impacted Minor A.T.'s  
6 family's ability to enjoy Hawaii as well during that time.

7 43. As a result of Minor A.T.'s fall, Minor A.T. incurred medical expenses.

8 44. Additionally, Plaintiffs wish that Disney take proactive steps necessary to  
9 prevent this from happening to anyone else again and/or to make disclosures to the  
10 public to make people aware of the excessively slippery condition of the Aulani pool  
11 grounds. Reason being, had Defendants disclosed the unsafe conditions of its pool  
12 area grounds, Plaintiffs would have known of the unsafe conditions of the pool area  
13 grounds and Plaintiffs would have never booked and/or stayed at Aulani or would  
14 have paid less to do so.

15 45. Of note, Plaintiffs noticed that at the next hotel they stayed at for the  
16 remainder of their time in Hawaii, the facility had Non-Slip strips on staircases.

17 46. Similarly, other hotels in Hawaii utilize Vinyl Mesh Pool Mats in high  
18 slip areas.

19 47. Other hotels utilize slip resistant surfaces and permanent warning signs  
20 for slippery areas.

21 48. Other hotels utilize slip resistant materials for flooring to prevent  
22 excessive slipping in and around the pool areas.

23 49. Plaintiffs believe that the aforementioned Anti-Slip Products and/or  
24 Technology would be appropriate and that the Court should require Disney to have the  
25 treatment applied if Disney will not do it on its own accord.

26 **NOTICE TO DEFENDANT**

27 50. In or about May 6, 2023, Plaintiffs, individually and on behalf of their  
28 minor son, by and through undersigned counsel sent a letter to Defendant notifying

them of the problems addressed herein, Certified, Return Receipt Requested. To date, Disney has not sent a response.

51. Because the United States Postal Service failed to Return Receipt as Requested, Plaintiffs intend to send a second CLRA letter contemporaneously with the filing of this Complaint. In the event that Defendant fails to rectify the situation within thirty days of receipt of the new letter, Plaintiffs will amend the instant Complaint to add damages under the CLRA.

## **CLASS ACTION ALLEGATIONS**

52. SCOTT THOMPSON, individually and as Parent and Guardian of his Minor Child A.T., and DANIELLE THOMPSON, seek relief individually and on behalf of all others similarly situated.

53. Pursuant to Fed. R. Civ. P. Rule 23(a), (b)(2), (b)(3) and (c)(4), Plaintiffs seek certification of a Nationwide class defined as follows:

All citizens of the United States who stayed at Aulani.

54. Excluded from the Classes are Defendant, its subsidiaries and affiliates, its officers, directors, the members of their immediate families, and any entity in which Defendant has a controlling interest, to include the legal representatives, heirs, successors, or assigns of any such excluded party. Also excluded are the judicial officer(s) to whom this action is assigned, and the members of their immediate families.

55. Plaintiffs hereby reserve the right to amend or modify the class definitions with greater specificity or division after having had an opportunity to conduct discovery.

56. The proposed Class meets the criteria for certification under Rule 23(a), (b)(2), (b)(3) and (c)(4).

**57. Numerosity.** Fed. R. Civ. P. 23(a)(1). Consistent with Rule 23(a)(1), the members of the Class are so numerous and geographically dispersed that the joinder of all members is impractical. Disney has physical and/or email addresses for

1 the parents Class Members who therefore may be notified of the pendency of this  
2 action by recognized, Court-approved notice dissemination methods, which may  
3 include U.S. mail, electronic mail, internet postings, and/or published notice.

4 **58. Commonality and Predominance. Fed. R. Civ. P. 23(a)(2) and (b)(3).**  
5 Consistent with Rule 23(a)(2) and with 23(b)(3)'s predominance requirement, this  
6 action involves common questions of law and fact that predominate over any  
7 questions affecting individual Class members. The common questions include:

8 a. Whether Defendant had a duty of reasonable care to maintain its pool  
9 deck and/or step area, including applying anti-slip products and/or anti-slip  
10 technology to reduce the likelihood of slipping;

11 b. Whether Defendant knew or should have known of the susceptibility of  
12 its pool deck and steps to be susceptible to falling;

13 c. Whether Defendant's measures to prevent slipping and/or falling was  
14 reasonable;

15 d. Whether Defendant was negligent in failing to implement reasonable and  
16 adequate procedures and practices regarding pool deck and steps to prevent slipping  
17 and/or falling.

18 e. Whether Defendant engaged in unfair, unlawful, and/or deceptive trade  
19 practices to encourage people to stay at Aulani and feel safe on and around the pool  
20 deck and step areas;

21 f. Whether Defendant's failure to implement adequate safety measures  
22 rendered its pool deck and step area susceptible to slipping and/or falling;

23 g. Whether Defendant failed to adequately warn regarding its excessively  
24 slippery pool deck and/or steps and the lack of anti-slip products and/or technologies  
25 being applied.

26 h. Whether Defendant's acts and omissions were unfair, unlawful, and/or  
27 deceptive as it relates to its marketing and sales of its hotel stays and/or vacations at  
28 Aulani;

1           i.     Whether Plaintiffs and Class Members were injured and suffered  
2 damages or other losses because of Defendant's acts and omissions;

3           j.     Whether Plaintiffs and Class members are entitled to relief.

4       **59. Typicality. Fed. R. Civ. P. 23(a)(3).** Consistent with Rule 23(a)(3),  
5 Plaintiffs' claims are typical of those of other Class members. Plaintiffs each stayed  
6 at Aulani and suffered damage as a result of the unsafe conditions of the pool area  
7 surfaces, and that Aulani had safe conditions for a resort were a material fact in  
8 Plaintiffs decision to book a stay at Aulani resort. Plaintiffs' damages and injuries are  
9 akin to other Class Members, and Plaintiffs seek relief consistent with the relief  
10 sought by the Class. The claims of the Plaintiffs and the respective Class are based on  
11 the same legal theories and arise from the same unlawful and willful conduct of  
12 Defendants, resulting in the same injury to the Plaintiffs and the respective Class.  
13 Plaintiffs and all members of the Class are similarly affected by Defendants' wrongful  
14 conduct and were damaged in the same way. Plaintiffs' interests coincide with, and  
15 are not antagonistic to, those of the other Class members. Plaintiffs have been  
16 damaged by the same wrongdoing set forth in this Complaint. Plaintiffs' damages and  
17 injuries are akin to other Class Members, and Plaintiffs seek relief consistent with the  
18 relief sought by the Class.

19       **60. Adequacy. Fed. R. Civ. P. 23(a)(4).** Consistent with Rule 23(a)(4),  
20 Plaintiffs are adequate representatives of the Class because Plaintiffs are a member of  
21 the Class they seeks to represent; are committed to pursuing this matter against Disney  
22 to obtain relief for the Class; and have no conflicts of interest with the Class.  
23 Moreover, Plaintiffs' Counsel are competent and experienced in litigating class  
24 actions, including privacy litigation of this kind. Plaintiffs intend to vigorously  
25 prosecute this case and will fairly and adequately protect the Class's interests.

26       **61. Superiority. Fed. R. Civ. P. 23(b)(3).** Consistent with Rule 23(b)(3), a  
27 class action is superior to any other available means for the fair and efficient  
28 adjudication of this controversy, and no unusual difficulties are likely to be

1 encountered in the management of this class action. The quintessential purpose of the  
2 class action mechanism is to permit litigation against wrongdoers even when damages  
3 to an individual plaintiff may not be sufficient to justify individual litigation. Here, the  
4 damages suffered by Plaintiffs and the Class are relatively small compared to the  
5 burden and expense required to individually litigate their claims against Ring, and  
6 thus, individual litigation to redress Ring’s wrongful conduct would be impracticable.  
7 Individual litigation by each Class member would also strain the court system.  
8 Individual litigation creates the potential for inconsistent or contradictory judgments  
9 and increases the delay and expense to all parties and the court system. By contrast,  
10 the class action device presents far fewer management difficulties and provides the  
11 benefits of a single adjudication, economies of scale, and comprehensive supervision  
12 by a single court.

13       **62. Injunctive and Declaratory Relief.** Class certification is also  
14 appropriate under Rule 23(b)(2) and (c). Defendants, through their uniform conduct,  
15 acted or refused to act on grounds generally applicable to the Class as a whole,  
16 making injunctive and declaratory relief appropriate to the Class as a whole.

17       63. Likewise, particular issues under Rule 23(c)(4) are appropriate for  
18 certification because such claims present only particular, common issues, the  
19 resolution of which would advance the disposition of this matter and the parties'  
20 interests therein.

21       **64. Ascertainability.** Finally, all members of the proposed Classes are  
22 readily ascertainable. Disney has access to hotel stay visitor's names and addresses.  
23 Using this information, Class Members can be identified and ascertained for the  
24 purpose of providing notice.

## **FIRST CAUSE OF ACTION**

## **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION LAW ("UCL")**

## **Cal. Bus. Prof. Code § 17200**

28 ||| 65. Plaintiffs reallege and incorporates by reference each preceding

1 paragraph as though set forth at length herein.

2 66. Plaintiffs have standing to pursue this cause of action as Plaintiffs have  
3 suffered injury in fact and has lost money or property as a result of Defendants'  
4 actions as delineated herein.

5 67. The UCL defines unfair business competition to include any "unlawful,  
6 unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or  
7 misleading" advertising. Cal. Bus. Prof. Code § 17200.

8 68. A business act or practice is "unlawful" if it violates any established state  
9 or federal law.

10 69. Defendants' business practices, as alleged herein, violate the "unlawful"  
11 prong by:

12 (a) engaging in negligent acts and practices by failing to take one or more  
13 acts when it should have acted or by taking one or more affirmative actions that it  
14 should not have taken as described herein;

15 (b) knowingly and intentionally concealing from Plaintiffs and the Class  
16 material information; and/or

17 (c) Being negligent with respect to the maintenance of its pool deck and/or  
18 steps;

19 (d) having an attractive nuisance on its property;

20 (e) violating the Consumer Legal Remedies Act – namely, Cal. Civ. Code (a)  
21 § 1770(a)(5), represented that its "goods or services have sponsorship, approval,  
22 characteristics, ingredients, uses, benefits, or quantities that they do not have"; (b) §  
23 1770(a)(7), represented that Defendants' "goods or services are of a particular  
24 standard, quality, or grade, or that goods are of a particular style or model, if they are  
25 of another"; (c) § 1770(a)(9), advertised goods or services with intent not to sell them  
26 as advertised"; (e) § 1770(a)(19), inserted an unconscionable provision in the  
27 contract"; and (f) for other such violations of the CLRA that discovery will uncover.

28 (f) violating the FTC;

1                         (g) being unjustly enriched;  
 2                         (h) violating other common or statutory law.

3                 70. Defendants' business practices, as alleged herein, violate the "unfair"  
 4 prong of California Business & Professions Code §§ 17200, *et seq.* Defendants'  
 5 business practices are unfair business practice under the UCL because they "either  
 6 'offend[] an established public policy' or [are] 'immoral, unethical, oppressive,  
 7 unscrupulous or substantially injurious to consumers.'" *Evenchik v. Avis Rent A Car*  
 8 Sys., LLC, 2012 WL 4111382, at \*8 (S.D. Cal. Sept. 17, 2012) (*quoting McDonald v.*  
 9 *Coldwell Banker*, 543 F.3d 498, 506 (9th Cir.2008) (*quoting People v. Casa Blanca*  
 10 *Convalescent Homes, Inc.*, 159 Cal.App.3d 509, 530, 206 Cal.Rptr. 164 (1984)).

11                 71. A business act or practice is also "unfair" under the Unfair Competition  
 12 Law if the reasons, justifications, and motives of the alleged wrongdoer are  
 13 outweighed by the gravity of the harm to the alleged victims.

14                 72. As a direct and proximate result of Defendants' unlawful and unfair,  
 15 business practices, Plaintiffs and the Class have suffered injury in fact and lost money  
 16 or property.

17                 73. In particular, Minor A.T. slipped and fell and hit the back of his head  
 18 requiring a visit to the hospital. A.T.'s visit to the hospital resulted in medical bills  
 19 due to testing and treatment for his head injury. Plaintiffs were not able to enjoy the  
 20 facilities of Aulani as a result of the injury A.T. sustained on the property, which was  
 21 the purpose for which they chose to book a stay at Aulani.

22                 74. Additionally, Danielle Thompson would not have booked a stay at  
 23 Aulani had Disney not engaged in the "unlawful, unfair or fraudulent" acts or  
 24 practices identified herein, as well as the "unfair, deceptive, untrue or misleading"  
 25 advertising as identified herein.

26                 75. Furthermore, Scott Thompson, Danielle Thompson, and Minor A.T. were  
 27 unable to enjoy their stay at Aulani as they spent their time at the hospital and were  
 28 tending to Minor A.T.'s injuries during the rest of their stay at Aulani instead of

utilizing the slides and pool area at Aulani.

76. The injury resulting from Defendant's acts and practices is substantial, not outweighed by any countervailing benefits to consumers or to competition, and not an injury that the consumers themselves could reasonably have avoided.

77. The basis for Plaintiffs' claims emanated from California as one or more decisions regarding the safety and/or maintenance of its pool deck and/or pool steps occurred at The Walt Disney Company. Additionally, one or more decisions regarding the sale and marketing of its hotel stays and vacations occurred at The Walt Disney Company.

## **SECOND CAUSE OF ACTION**

# **VIOLATIONS OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT (CAL. CIV. CODE § 1750, ET SEQ.)**

78. Plaintiffs incorporate by reference all preceding allegations as though fully forth herein.

79. California's Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750, et seq., proscribes "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer."

80. Disney offers various pool and/or slide related Activities (hereinafter “Pool-Side Services”) at the Aulani Resort & Spa.

81. By way of example and not limitation, pool and/or slide related Activities Disney advertises is the Waikolohe Pool, the Wikolohe Stream, the Wailana Pool, and Whirlpool Spas:



#### 1 UNDERWATER EXPLORERS

2 Learn how to scuba dive at Rainbow Reef—with lessons in the basics of  
3 scuba diving and safety procedures, followed by free swim time.



#### 4 WAIKOLOHE POOL

5 Included With Your Stay

6 Boasting 8,200 square feet, zero entry and a tunnel body slide, the Volcanic  
7 Vertical, this is the crown jewel of pools at Aulani Resort.



#### 8 WAIKOLOHE STREAM

9 Included With Your Stay

10 Enjoy 2 tubing adventures from atop Pu'u Kilo; extreme rapids that twist  
11 through caverns or a lazy river that glides along a tropical landscape.



#### 11 WAILANA POOL

12 Included With Your Stay

13 Get away to the serenity and seclusion of Wailana Pool, which is off the  
14 beaten track.



#### 15 WHIRLPOOL SPAS

16 Included With Your Stay

17 Four whirlpool spas promise relaxation—2 with spectacular sunset views. Tip  
18 for parents: unwind while the kids play at Aunty's Beach House.

See, <https://www.disneyaulani.com/activities/>.

83. The Activities Disney offers are each a “service” within the meaning of Cal. Civ. Code § 1761(b).

84. Plaintiffs and the other Class members are “consumers” as defined in Cal. Civ. Code § 1761(d), and Plaintiffs, the other Class members, and Defendants are “persons” as defined in Cal. Civ. Code § 1761(c).

85. As alleged herein, Defendants made misleading representations and omissions concerning the benefits, performance, and safety of the “Pool-Side Services”.

86. In booking a Resort Stay, Plaintiff Danielle Thompon purchased the access to the Pool-Side Services on behalf of herself and her family, including Scott Thompson and Minor A.T.

1       87. Plaintiffs and other Class members were deceived by Defendants failure  
2 to disclose its knowledge of the defective and dangerous nature of the Pool-Area  
3 Services pool-side area and grounds.

4       88. Defendants' conduct as described herein was and is in violation of the  
5 CLRA. Defendants' conduct violates at least the following enumerated CLRA  
6 provisions:

7             (a) in violation of § 1770(a)(5), represented that Defendants' "goods or  
8 services have sponsorship, approval, characteristics, ingredients, uses, benefits, or  
9 quantities that they do not have";

10           (b) in violation of § 1770(a)(7), represented that Defendants' "goods or  
11 services are of a particular standard, quality, or grade, or that goods are of a particular  
12 style or model, if they are of another";

13           (c) in violation of § 1770(a)(9), advertised goods or services with intent not  
14 to sell them as advertised";

15           (d) in violation of § 1770(a)(19), inserted an unconscionable provision in the  
16 contract"; and

17           (e) for other such violations of the CLRA that discovery will uncover.

18       89. Defendants intentionally and knowingly misrepresented and omitted  
19 material facts regarding the pool area surfaces and services with an intent to mislead  
20 Plaintiffs and Class members.

21       90. Defendants' actions as described herein were done with conscious  
22 disregard of Plaintiffs' rights and Defendants was wanton and malicious in  
23 Defendant's concealment of the same.

24       91. In purchasing or leasing the goods or services, Plaintiffs and other Class  
25 members were deceived by Defendants' failure to disclose their knowledge of the  
26 Defect.

27       92. Plaintiffs and other Class members had no way of knowing Defendants'  
28 representations were false, misleading, and incomplete or knowing the true nature of

1 the Defect.

2       93. As alleged herein, Defendants engaged in a pattern of deception and  
3 public silence in the face of a known Defect.

4       94. Plaintiffs and other Class members did not, and could not, unravel  
5 Defendants' deception on their own.

6       95. Defendants knew or should have known their conduct violated the  
7 CLRA.

8       96. Defendants owed Plaintiffs and the Class members a duty to disclose the  
9 truth about the dangerous condition of the Pool-Area Services because the Pool side  
10 surfaces created a safety hazard and Defendants:

11             (a) Possessed exclusive knowledge of the dangerous condition of the pool  
12 area surfaces and related services;

13             (b) Intentionally concealed the foregoing from Plaintiffs and Class members;  
14 and/or

15             (c) Made incomplete representations in advertisements and on its website,  
16 failing to warn the public of the dangerous condition of the pool area surfaces and  
17 related services.

18       97. Defendants had a duty to disclose that the pool area has the defective  
19 surfaces making them extremely dangerous to Plaintiffs, Plaintiffs' family, and other  
20 hotel guests, because the pool area surfaces created a safety hazard, and Plaintiffs and  
21 the other Class members relied on Defendants' material misrepresentations and  
22 omissions regarding the features of the pool area and related services.

23       98. Defendants' conduct proximately caused injuries to Plaintiffs and  
24 Plaintiffs' Minor A.T. and the other Class members that purchased the and suffered  
25 harm as alleged herein.

26       99. Plaintiffs and the other Class members were injured and suffered  
27 ascertainable loss, injury-in-fact, and/or actual damage as a proximate result of  
28 Defendants' conduct in that Plaintiffs and the other Class members incurred costs,

1 including overpaying for their Hotel Stay and related fees that have suffered a  
2 diminution in value.

3 100. Defendants' violations cause continuing injuries to Plaintiffs and other  
4 Class members.

5 101. Defendants' unlawful acts and practices complained of herein affect the  
6 public interest.

7 102. Defendants knew of the dangerous condition of the pool area surfaces  
8 and related services, and that the pool-area surfaces and services were materially  
9 compromised by it.

10 103. The facts concealed and omitted by Defendants from Plaintiffs and other  
11 Class members are material in that a reasonable consumer would have considered  
12 them to be important in deciding whether to purchase access to the Pool-Area Services  
13 or pay a lower price.

14 104. Had Plaintiffs and the other Class members known about the defective  
15 nature of the Pool Area and related services, they would not have purchased the hotel  
16 stay and related services or would not have paid the prices they paid.

17 105. Defendant's unfair and/or unlawful acts, practices, representations,  
18 omissions, and/or courses of conduct, as described herein, were undertaken by  
19 Defendants in a transaction intended to result in, and which did result in, the sale or  
20 lease of goods or services to consumers.

21 106. Pursuant to § 1780(d) of the CLRA, attached hereto as **Exhibit A** are the  
22 affidavits showing that this action has been commenced in the proper forum.

23 107. Plaintiffs' and the other Class members' injuries were proximately  
24 caused by Defendants' unlawful and deceptive business practices.

25 108. Pursuant to Cal. Civ. Code § 1780(a), Plaintiffs seek an order enjoining  
26 Defendants from engaging in the methods, acts, or practices alleged herein, including  
27 further concealment of the dangerous condition of the Pool-Area Services.

28 109. Pursuant to Cal. Civ. Code § 1782(a)(2), Plaintiffs demand judgment

1 against Defendants under the CLRA for injunctive and equitable relief to enjoin the  
2 practices described herein.

3 110. Plaintiffs intend to send a CLRA notice letter to Defendants certified  
4 mail, return receipt requested regarding Defendant's violations of the CLRA.

5 111. Pursuant to Cal. Civ. Code § 1782, if Defendants does not rectify its  
6 conduct within 30 days of the date of receipt of the letter, Plaintiffs intend to amend  
7 this Complaint to add claims under the Cal. Civ. Code for Actual damages, but in no  
8 case shall the total award of damages in a class action be less than one thousand  
9 dollars (\$1,000).

10 112. Under the CLRA, a plaintiff may without prior notification file a  
11 complaint alleging violations of the CLRA that seeks injunctive relief only. Then, if  
12 the Defendant does not remedy the CLRA violations within 30 days of notification,  
13 the plaintiff may amend her or his CLRA causes of action without leave of court to  
14 add claims for damages. Plaintiffs, individually and on behalf of the class, intend to  
15 amend this complaint to add damages claims if Defendants do not remedy their  
16 respective violations as to Plaintiffs and the Class Members within the statutory  
17 period.

18 113. Plaintiffs have no adequate remedy at law for the future unlawful acts,  
19 methods, or practices as set forth above.

20 114. In bringing this action, Plaintiffs has engaged the services of attorneys  
21 and has incurred reasonable legal fees and expenses in an amount to be proved at trial.

22 115. Plaintiffs are thus entitled to recover Plaintiffs' attorneys' fees, costs, and  
23 expenses.

24 116. Defendant's practices, acts, and courses of conduct in connection with  
25 the sale of its pool-area services that were in a dangerous condition, as described  
26 above, are likely to mislead a reasonable consumer acting reasonably under the  
27 circumstances to his or her detriment. As a result of Defendant's acts and practices as  
28 alleged in this Complaint, Plaintiffs are entitled to injunctive relief prohibiting

1 Defendants from continuing in the future the unlawful, unfair, or fraudulent practice  
2 as described herein.

3 117. Plaintiffs reasonably believed and/or depended on the material false  
4 and/or misleading information provided by, or omitted by, Defendants with respect to  
5 Defendant's unfair acts and deceptive practices.

6 118. By reason of the foregoing, Defendant's unlawful methods, acts, or  
7 practices as described herein have caused damage to Plaintiff, entitling Plaintiffs to  
8 damages and injunctive relief; Attorneys' fees and costs; and other relief that this  
9 Court deems proper.

10 119. Plaintiffs reserve the right to amend this Complaint and to assert a claim  
11 for damages pursuant to Civil Code §1782.

12 **THIRD CAUSE OF ACTION**

13 **NEGLIGENCE**

14 120. Plaintiffs reallege and incorporate by reference each preceding paragraph  
15 as though set forth at length herein.

16 121. Defendant owes Plaintiffs and the Class Members a duty to provide a  
17 safe area for people to enjoy the outdoor pool facilities at Aulani.

18 122. Defendant owes Plaintiffs and the Class Members a duty to exercise  
19 reasonable care in designing, maintaining, and testing the pool deck area and steps to  
20 ensure the pool deck and pool step area was reasonably safe for visitors.

21 123. This duty included, among other things, designing, maintaining, and  
22 testing the pool deck and step area to ensure that the pool deck is reasonably safe for  
23 visitors ambulating in the area.

24 124. Swimming pool and slide owners like Disney have a responsibility to  
25 maintain and provide a safe environment for all children and adults who utilize the  
26 pool and slide area.

27 125. Defendant's duty to Plaintiffs and the Class Members also arise from  
28 Defendant's express and implied representations that Aulani is a family friendly

1 vacation spot for people of all ages.

2 126. Defendant also has a duty to Plaintiffs and the Class Members to post  
3 signs outlining how dangerous and slippery the flooring is at Aulani.

4 127. Defendant also has a duty to Plaintiffs and the Class Members to place  
5 anti-slip tape and anti-slip mats to make Aulani's pool area less slippery.

6 128. Defendant has a duty to Minor Plaintiff A.T. and the Class Members to  
7 apply anti-slip technology treatment to make Aulani's pool area less slippery.

8 129. Defendant has a duty to Plaintiffs and the Class Members to use cleaning  
9 products that do not make Aulani's pool area slippery.

10 130. This duty further arose because Defendant was responsible for the  
11 design, develop, maintenance, test, ensure safety, and provide reasonable access to  
12 Aulani's pool area pools, pool activities, and pool services to its visitors, who were the  
13 foreseeable victims of negligence in the design, development, testing, safety, and/or  
14 maintenance of Aulani's pool area, pool activities, and pool services.

15 131. Defendant failed to design, develop, maintenance, test, ensure safety, and  
16 provide reasonable access to its pool area, including the pool deck and pool steps  
17 areas, as set forth above to ensure it is safe for visitors, including Plaintiffs and the  
18 Class Members.

19 132. Plaintiffs and Class Members were harmed as a result; and

20 133. Defendant's negligence was a substantial factor in causing Plaintiffs and  
21 the Class Members' harm.

22 **PRAYER FOR RELIEF**

23 **WHEREFORE**, Plaintiff, on behalf of herself and all others similarly situated,  
24 respectfully requests the following relief:

25 a. An Order certifying this case as a class action;  
26 b. An Order appointing Plaintiffs as the class representative;  
27 c. An Order appointing undersigned counsel as class counsel;  
28 d. A mandatory injunction directing the Defendant to hereinafter adequately

1 design, develop, maintenance, test, ensure safety, and provide reasonable access to  
2 Aulani's pool area by implementing improved policies, procedures, and measures,  
3 including the application of anti-slip technology, products, and services and provide  
4 adequate warnings to all visitors;

5 134. Expressly excluding an award of damages under California's Consumer

6 Legal Remedies Act ("CLRA") Cal. Civ. Code § 1750, an award of damages;

7

8 a. An award of costs and expenses;  
9 b. An award of attorneys' fees; and  
10 c. Such other and further relief as this court may deem just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiffs demand a jury trial as to all issues triable by a jury.

13 Dated: November 8, 2023 Respectfully submitted,

14 By: /s/ Francis J. "Casey" Flynn, Jr.  
15 Francis J. "Casey" Flynn, Jr., SBN 304712  
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20 **ATTORNEYS FOR PLAINTIFFS AND  
21 THE PROPOSED CLASS**